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SENATE BILL 932

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Manny M. Aragon

AN ACT

RELATING TO FINANCE; ENACTING THE STATEWIDE ECONOMIC
DEVELOPMENT FINANCE ACT; AUTHORIZING THE CREATION OF A
STATEWIDE ECONOMIC DEVELOPMENT FINANCE PROGRAM; AUTHORIZING THE
ISSUANCE OF ECONOMIC DEVELOPMENT BONDS, LOAN PARTICIPATIONS AND
LOAN GUARANTEES ON BEHALF OF ENTITIES ENGAGED IN QUALIFYING
ECONOMIC DEVELOPMENT PROJECTS; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. [NEW MATERIAL] SHORT TITLE. -- Sections 1
through 16 of this act may be cited as the "Statewide Economic
Development Finance Act".

Section 2. [NEW MATERIAL] FINDINGS AND PURPOSE. --

A. The legislature finds that:

(1) an important purpose of government is to
promote, support and assist in developing a thriving economic

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1 base within the state; increase opportunities for gainful
2 employment and improved living conditions; assist in promoting
3 a balanced and productive economy; encourage the flow of
4 private capital for investment in productive enterprises; and
5 otherwise improve the prosperity, health and general welfare of
6 the people of the state;

7 (2) in order to attract and encourage
8 established businesses to locate in New Mexico, to retain and
9 expand existing New Mexico businesses and to provide an
10 environment that supports new and emerging businesses within
11 the state, New Mexico communities must be able to provide basic
12 infrastructure and educational, cultural and recreational
13 facilities that require substantial financial resources beyond
14 those of many New Mexico communities;

15 (3) other states have agencies dedicated to
16 providing financing for economic development projects, which
17 agencies work directly with the state, cities, counties and
18 regional economic development agencies to provide the necessary
19 financing related to retaining and attracting businesses and to
20 provide financing to qualified nonprofit corporations that
21 provide community housing, education, health care and cultural
22 facilities;

23 (4) it is necessary to provide coordinated
24 planning and financing resources to address community and
25 cultural infrastructure needs; and

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1 (5) the combined expertise and resources of
2 the economic development department and the New Mexico finance
3 authority should be utilized:

4 (a) for the effective promotion of
5 economic development within the state;

6 (b) to increase the gainful employment
7 of the citizens and decrease the cost of social services and
8 unemployment compensation;

9 (c) to increase the tax base of the
10 state; and

11 (d) to improve the prosperity, health
12 and welfare of the people of the state.

13 B. The purpose of the Statewide Economic
14 Development Finance Act is to stimulate economic development
15 with a needed program in the public interest that serves a
16 necessary and valid public purpose.

17 Section 3. [NEW MATERIAL] DEFINITIONS.--As used in the
18 Statewide Economic Development Finance Act:

19 A. "annual in-lieu payment" means an annual payment
20 negotiated and determined by a local government, a local school
21 board and an eligible entity, to be paid to the local school
22 board to compensate it for a reduction in property taxes
23 resulting from a property tax exemption for project property;

24 B. "authority" means the New Mexico finance
25 authority;

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1 C. "department" means the economic development
2 department;

3 D. "economic development bonds" or "bonds" means
4 bonds, notes or other instruments issued by the authority
5 pursuant to the Statewide Economic Development Finance Act;

6 E. "economic development goal" means the retention
7 and expansion of existing business enterprises, the attraction
8 of new business enterprises or the creation and promotion of an
9 environment suitable for the support of start-up and emerging
10 business enterprises within the state, whether the business
11 enterprises are for-profit or not-for-profit;

12 F. "eligible entity" means the person operating a
13 project; "eligible entity" may include a 501(c)(3) corporation
14 or other not-for-profit corporation, or a for-profit business
15 enterprise, including a corporation, limited liability company,
16 partnership or other entity, determined by the department to be
17 engaged in a project enterprise that serves an economic
18 development goal and is suitable for financing assistance;

19 G. "financing assistance" means financing provided
20 by the authority to eligible entities pursuant to the Statewide
21 Economic Development Finance Act or the New Mexico Finance
22 Authority Act that may be in the form of economic development
23 bonds, loan participations or loan guarantees;

24 H. "local government" means a municipality, county,
25 special district or other political subdivision of the state

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1 with planning, zoning or other land use regulatory jurisdiction
2 applicable to a project;

3 I. "local school board" means the governing board
4 of a school district located in a municipality or county in
5 which project property has been exempted from property taxes;

6 J. "mortgage" means a mortgage, deed of trust or
7 pledge of any assets as a collateral security;

8 K. "opt-in agreement" means an agreement entered
9 into between the department and a local government that
10 provides for local government approval of a project, subject to
11 compliance with all local zoning, permitting and other land use
12 regulations, and for payments in lieu of taxes to the local
13 government as provided by the Statewide Economic Development
14 Finance Act;

15 L. "payment in lieu of taxes" means a payment, in
16 an amount determined by the department, made to a qualifying
17 municipality or county to mitigate the tax impact of a project;

18 M "project" means the acquisition and use of land,
19 buildings, other improvements and other project property for
20 use by an eligible entity as:

21 (1) industrial facilities;

22 (2) commercial facilities, including
23 facilities for wholesale sales and services;

24 (3) housing facilities, including multi family
25 housing;

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1 (4) health care facilities, including
2 hospitals, clinics, laboratory facilities and related office
3 facilities;

4 (5) educational facilities, including schools;

5 (6) arts and cultural facilities, including
6 museums, theaters, arenas or assembly halls; and

7 (7) recreational and tourism facilities,
8 including parks, pools, trails, open space and equestrian
9 facilities;

10 N. "project property" means any land and
11 improvements thereon, buildings and improvements thereto,
12 machinery and equipment of all kinds necessary to the project,
13 operating capital and other personal property deemed necessary
14 in connection with the project;

15 O. "qualifying municipality or county" means a
16 local government that approves a project; and

17 P. "tax impact of a project" means the annual
18 reduction in property tax revenue to affected property tax
19 revenue recipients directly resulting from the conveyance of
20 property to the department.

21 Section 4. [NEW MATERIAL] ECONOMIC DEVELOPMENT
22 DEPARTMENT--ADDITIONAL POWERS.--Consistent with the provisions
23 of the Statewide Economic Development Finance Act, the
24 department may:

25 A. acquire, whether by construction, purchase, gift

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1 or lease, and hold fee simple title to or other interest in any
2 project or project property;

3 B. enter into a lease of property in connection
4 with any project or project property;

5 C. sell, lease or otherwise dispose of any project
6 property;

7 D. assign lease payments, rents and any other
8 revenues derived from a project to the authority pursuant to
9 leases, mortgages or indentures securing payment of the
10 principal of, interest on and any other charges and expenses
11 relating to bonds issued by the authority;

12 E. make payments in lieu of taxes to a qualifying
13 municipality or county to offset the tax impact of a project;
14 and

15 F. coordinate with the authority:

16 (1) for the authority's provision of staffing
17 support and assistance in carrying out the department's
18 responsibilities under the Statewide Economic Development
19 Finance Act; and

20 (2) to enter into memoranda of understanding
21 or such other agreements as the department and authority deem
22 appropriate for such purposes.

23 Section 5. [NEW MATERIAL] ADDITIONAL DUTIES OF THE
24 ECONOMIC DEVELOPMENT DEPARTMENT AND THE NEW MEXICO FINANCE
25 AUTHORITY-- OPT-IN AGREEMENTS. --

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1 A. For the purpose of recommending projects to the
2 authority for financing assistance, the department and the
3 authority shall coordinate to:

4 (1) survey potential eligible entities and
5 projects and provide outreach services to local governments and
6 eligible entities, for the purpose of identifying and
7 recommending projects to the authority for financing
8 assistance;

9 (2) evaluate potential projects for
10 suitability for financing assistance;

11 (3) formulate recommendations of projects that
12 are suitable for financing assistance; and

13 (4) obtain input and information from the
14 authority relevant to the establishment and implementation of
15 criteria for evaluating potential projects.

16 B. The department, with such staffing and other
17 assistance from the authority as the department may request,
18 shall propose to enter into opt-in agreements with local
19 governments for the purpose of facilitating local government
20 approvals necessary to permit projects to proceed. Opt-in
21 agreements shall provide:

22 (1) for project compliance with all applicable
23 local land use regulations;

24 (2) for payments in lieu of taxes to
25 qualifying municipalities and counties to mitigate the tax

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1 impact of a project;

2 (3) that financing assistance is conditioned
3 upon compliance with:

4 (a) all applicable ordinances,
5 regulations and codes of a local government concerning
6 planning, zoning and development permitting; and

7 (b) such other requirements as the
8 department and the local government may agree to include;

9 (4) that the payments in lieu of taxes shall
10 be distributed in a manner and in amounts calculated in
11 accordance with the provisions of Section 14 of the Statewide
12 Economic Development Finance Act; and

13 (5) that a local government reserves the right
14 to withdraw from the agreement if it determines that the
15 project subject to the agreement does not satisfy the
16 requirements enumerated in the opt-in agreement.

17 C. The department shall adopt rules for the
18 exercise of its powers and responsibilities pursuant to the
19 Statewide Economic Development Finance Act.

20 Section 6. [NEW MATERIAL] NEW MEXICO FINANCE AUTHORITY--
21 ADDITIONAL POWERS AND DUTIES. --

22 A. Consistent with the provisions of the Statewide
23 Economic Development Finance Act, the authority may:

24 (1) issue economic development bonds, notes or
25 other debt instruments on behalf of an eligible entity, payable

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1 from the revenues of a project and other revenues authorized as
2 security for the bonds, to finance a project on behalf of an
3 eligible entity;

4 (2) enter into loan participation agreements
5 on behalf of eligible entities, whether in the form of an
6 interest rate buy-down, the purchase of loans originated and
7 underwritten by third-party lenders or other similar
8 arrangements;

9 (3) offer loan guarantees;

10 (4) make, enter into and enforce all contracts
11 necessary, convenient or desirable for purposes of the
12 authority or pertaining to the other powers granted pursuant to
13 the Statewide Economic Development Finance Act;

14 (5) make and execute contracts for the
15 origination, administration, servicing or collection of any
16 loan, and to pay the reasonable value of services rendered to
17 the authority pursuant to the contracts;

18 (6) fix, revise from time to time, charge and
19 collect fees and other charges in connection with the issuance
20 of bonds; the making, purchase or guaranty of loans; and any
21 other services rendered by the authority;

22 (7) employ architects, engineers, accountants
23 and attorneys; housing, construction and financial experts; and
24 such other advisors, consultants and agents as may be necessary
25 in its judgment, and fix and pay their compensation;

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1 (8) acquire fee simple, leasehold, mortgagor's
2 or mortgagee's interests in real or personal property and to
3 sell, mortgage, convey, lease or assign that property for
4 authority purposes; and

5 (9) in the event of default by an eligible
6 entity, enforce its rights by suit, mandamus and all other
7 remedies available under state law.

8 B. The authority shall adopt policies and
9 procedures to:

10 (1) establish minimum credit qualifications
11 for financing assistance to eligible entities for projects
12 recommended by the department;

13 (2) establish procedures for applying for
14 financing assistance; and

15 (3) establish fees to pay the costs of
16 originating and administering financing assistance.

17 C. The authority shall coordinate with the
18 department to provide staffing and other assistance to the
19 department in carrying out the department's responsibilities
20 and activities pursuant to the Statewide Economic Development
21 Finance Act.

22 Section 7. [NEW MATERIAL] ECONOMIC DEVELOPMENT BONDS. --

23 A. The authority may issue economic development
24 bonds on behalf of an eligible entity to provide funds for a
25 project recommended by the department for financing assistance.

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1 Bonds issued pursuant to the Statewide Economic Development
2 Finance Act shall not be a general obligation of the authority
3 or the state within the meaning of any provision of the
4 constitution of New Mexico, and shall never give rise to a
5 pecuniary liability of the authority or the state or a charge
6 against the general credit or taxing powers of the state, and
7 every bond issued pursuant to the Statewide Economic
8 Development Finance Act shall state that fact plainly on its
9 face. Bonds shall be payable from the revenue derived from a
10 project being financed by the bonds and from other revenues
11 pledged by an eligible entity, and may be secured in such
12 manner as provided in the Statewide Economic Development
13 Finance Act and as deemed appropriate by the authority. Bonds
14 may be executed and delivered at any time, and from time to
15 time, may be in such form and denominations, may be of such
16 tenor, may be payable in such installments and at such time or
17 times not exceeding thirty years from their date of delivery,
18 may be payable at such place or places, may bear interest at
19 such rate or rates payable at such place or places and
20 evidenced in such manner and may contain such provisions not
21 inconsistent with the Statewide Economic Development Finance
22 Act, all as shall be provided in the resolution and proceedings
23 of the authority authorizing issuance of the bonds. Bonds
24 issued by the authority pursuant to the Statewide Economic
25 Development Finance Act may be sold at public or private sale

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1 in such manner and from time to time as may be determined by
2 the authority to be most advantageous, and the authority may
3 pay all expenses; attorney, engineering and architect fees;
4 premiums; and commissions that the authority may deem necessary
5 or advantageous in connection with the authorization, sale and
6 issuance of the bonds. All bonds issued pursuant to the
7 Statewide Economic Development Finance Act shall be construed
8 to be negotiable.

9 B. The principal of and interest on bonds issued
10 pursuant to the Statewide Economic Development Finance Act
11 shall be secured by a pledge of the revenues of the project
12 being financed with the proceeds of the bonds, may be secured
13 by a mortgage of all or any part of the project property being
14 financed or other collateral pledged by an eligible entity, and
15 may be secured by the lease of such project property, which
16 collateral and lease may be assigned, in whole or in part, by
17 the department to the authority or to third parties to carry
18 out the purposes of the Statewide Economic Development Finance
19 Act. The resolution of the authority pursuant to which the
20 bonds are authorized to be issued or any such mortgage may
21 contain any agreement and provisions customarily contained in
22 instruments securing bonds, including, without limiting the
23 generality of the foregoing, provisions respecting the fixing
24 and collection of all revenues from any project to which the
25 resolution or mortgage pertains, the terms to be incorporated

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1 in the lease of the project property, the maintenance and
2 insurance of the project property, the creation and maintenance
3 of special funds from the revenues of the project and the
4 rights and remedies available in event of default to the
5 bondholders or to the trustee under a mortgage, all as the
6 authority or the department shall deem advisable and as shall
7 not be in conflict with the Statewide Economic Development
8 Finance Act; provided, however, that in making any such
9 agreements or provisions the authority and the department may
10 obligate themselves except with respect to the project and
11 application of the revenues therefrom, and except as expressly
12 permitted by the Statewide Economic Development Finance Act,
13 and shall not have the power to incur a pecuniary liability or
14 a charge, or to pledge the general credit or taxing power of
15 the state. The resolution authorizing the issuance of bonds
16 may provide procedures and remedies in the event of default in
17 payment of the principal of or interest on the bonds or in the
18 performance of any agreement. No breach of any such agreement
19 shall impose any pecuniary liability upon the authority, the
20 department or the state or any charge against the general
21 credit or taxing powers of the state.

22 C. The authority may arrange for such other
23 guarantees, insurance or other credit enhancements or
24 additional security provided by an eligible entity as the
25 authority may deem appropriate for the bonds and may provide

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1 for the payment of the costs of the same from the proceeds of
2 the bonds, or may require payment of the costs by the eligible
3 entity on whose behalf the bonds are issued.

4 D. Bonds issued to finance a project may also be
5 secured by pledging a portion of the qualifying municipal or
6 county infrastructure gross receipts tax revenues by the
7 municipality or county in which the project is located, as
8 permitted by the Local Economic Development Act.

9 E. The bonds and the income from the bonds, all
10 mortgages or other instruments executed as security for the
11 bonds, all lease agreements made pursuant to the provisions
12 hereof and revenue derived from any sale or lease of project
13 property shall be exempt from all taxation by the state or any
14 political subdivision. The authority may issue bonds the
15 interest on which is exempt from taxation under federal law.

16 Section 8. [NEW MATERIAL] LEASES OF PROJECT PROPERTY.--

17 A. Prior to the department's lease of any project
18 property to an eligible entity, the authority shall determine:

19 (1) the amount necessary in each year to pay
20 the principal of and interest on bonds proposed to be issued to
21 finance the project;

22 (2) the amount necessary to be paid each year
23 into any reserve funds that the authority may deem advisable to
24 establish in connection with the retirement of the proposed
25 bonds and the maintenance and repair of the project property;

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1 and

2 (3) unless the terms under which the project
3 property is to be leased provide that the lessee shall maintain
4 the project property and carry all proper insurance with
5 respect thereto, the estimated cost of maintaining the project
6 property in good repair and keeping it properly insured.

7 B. The determinations required by Subsection A of
8 this section shall be set forth in the resolution under which
9 the proposed bonds are to be issued; and prior to the issuance
10 of the bonds, the department shall lease the project property
11 to a lessee or purchaser pursuant to an agreement conditioned
12 upon completion of the project and providing for payment to the
13 department and assigned to the authority or a trustee, of such
14 rentals or payments as will be sufficient to:

15 (1) pay the principal of and interest on the
16 bonds issued to finance the project;

17 (2) build up and maintain any reserve deemed
18 by the authority to be advisable in connection with the bonds;
19 and

20 (3) pay the costs of maintaining the project
21 property in good repair and keeping it properly insured, unless
22 the lease obligates the lessee to pay for the maintenance and
23 insurance of the project property.

24 Section 9. [NEW MATERIAL] REFUNDING BONDS. --

25 A. Outstanding economic development bonds may at
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1 any time and from time to time be refunded by the authority by
2 issuing its refunding bonds in such amounts as the authority
3 may determine to refund all or a portion of the principal of
4 the bonds, all unpaid accrued and unaccrued interest on the
5 bonds to the normal maturity date of such bonds or to selected
6 prior redemption dates thereof, any redemption premiums, any
7 commission and all estimated costs incidental to the issuance
8 of such bonds and to such refunding as may be determined by the
9 authority. The principal amount of refunding bonds may be
10 equal to, less than or greater than the principal amount of the
11 bonds to be refunded. Any such refunding may be effected
12 whether the bonds to be refunded have matured or will
13 thereafter mature, either by sale of the refunding bonds and
14 the application of the proceeds thereof for the payment of the
15 bonds to be refunded thereby, or by exchange of the refunding
16 bonds for the bonds to be refunded thereby; provided that the
17 holders of any bonds to be refunded shall not be compelled
18 without their consent to surrender their bonds for payment or
19 exchange prior to the date on which they are payable or, if
20 they are called for redemption, prior to the date on which the
21 they are by their terms subject to redemption. Refunding bonds
22 shall be payable from the revenues out of which other bonds
23 issued pursuant to the Statewide Economic Development Finance
24 Act may be payable or from the amounts derived from an escrow
25 as provided in this section, including amounts derived from the

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1 investment of refunding bond proceeds and other legally
2 available amounts also as provided in this section, or from any
3 combination of the foregoing sources, and may be secured in the
4 manner that other bonds issued pursuant to the Statewide
5 Economic Development Finance Act may be secured.

6 B. Proceeds of refunding bonds shall either be
7 applied immediately to the retirement of the bonds being
8 refunded or placed in escrow in a commercial bank or trust
9 company that possesses and is exercising trust powers.
10 Notwithstanding any other provision of law, the escrowed
11 proceeds may be invested in short-term or long-term securities.
12 Except to the extent inconsistent with the express terms of the
13 Statewide Economic Development Finance Act, the resolution of
14 the authority pursuant to which the bonds to be refunded were
15 issued, including any mortgage or trust indenture securing the
16 bonds, shall govern the establishment of any escrow in
17 connection with the refunding bonds and the investment or
18 reinvestment of any escrowed proceeds.

19 Section 10. [NEW MATERIAL] USE OF BOND PROCEEDS. -- The
20 proceeds from the sale of bonds issued pursuant to the
21 Statewide Economic Development Finance Act shall be applied
22 only for the purpose for which the bonds were issued and cost
23 related to the acquisition of the project property. The cost
24 of acquiring any project property shall include the following:

25 A. the cost of the construction of any part of

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1 project property that may be constructed, including architect,
2 engineering and attorney fees;

3 B. the purchase price of any part of project
4 property that may be acquired by purchase;

5 C. the cost of the extension of any utility to the
6 project site;

7 D. all expenses in connection with the
8 authorization, sale and issuance of the bonds; and

9 E. the interest on the bonds for a reasonable time
10 prior to construction, during construction and a reasonable
11 time after completion of construction.

12 Section 11. [NEW MATERIAL] BONDS LEGAL INVESTMENTS. --
13 Bonds issued pursuant to the Statewide Economic Development
14 Finance Act shall be legal investments for savings banks and
15 insurance companies organized under the laws of the state.

16 Section 12. [NEW MATERIAL] LOAN PARTICIPATIONS. --The
17 authority may purchase loans or participations in loans to
18 eligible entities by third-party lenders for projects
19 recommended by the department, in amounts and pursuant to such
20 terms as the authority deems appropriate pursuant to the
21 authority's rules, where:

22 A. the third-party lender is responsible for the
23 origination, underwriting, servicing and administration of the
24 loan; and

25 B. the portion of the loan purchased or

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1 underwritten by the authority is secured by a lien on a parity
2 with the lien obtained by the third-party lender in any
3 collateral, pursuant to which the authority's rights in such
4 collateral may be exercised on a pro-rata basis with the third-
5 party lender's rights in the collateral.

6 Section 13. [NEW MATERIAL] STATEWIDE LOAN PARTICIPATION
7 FUND. --

8 A. The "statewide loan participation fund" is
9 created within the authority. The fund shall be administered
10 by the authority as a separate account and may consist of such
11 subaccounts as the authority deems necessary to carry out the
12 purposes of the fund. The authority may establish procedures
13 for administering the fund in accordance with the Statewide
14 Economic Development Finance Act.

15 B. Except as otherwise provided in the Statewide
16 Economic Development Finance Act, money from payments of
17 principal of and interest on loan participations and other
18 securities held by the authority for projects receiving
19 financing assistance based upon the department's recommendation
20 shall be deposited in the fund; provided that fees charged by
21 the authority to pay the costs of originating and administering
22 loans, loan participations or loan guarantees for projects,
23 other than interest, shall not be deposited in the fund, but
24 shall be deposited in a separate account and may be used by the
25 authority to meet its administrative costs.

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1 C. Except as otherwise provided in the Statewide
2 Economic Development Finance Act, money in the fund is
3 appropriated to the authority to pay the reasonably necessary
4 costs of originating and servicing loan participations, to
5 purchase loan participations and to purchase securities to
6 assist eligible entities in financing projects in accordance
7 with the Statewide Economic Development Finance Act and
8 pursuant to the recommendation of each project by the
9 department.

10 D. Money in the fund that is not needed for
11 immediate disbursement, including money held in reserve, may be
12 deposited or invested in the same manner as other funds
13 administered by the authority.

14 E. Money on deposit in the fund may be designated
15 as a reserve for bonds issued by the authority pursuant to the
16 Statewide Economic Development Finance Act, including bonds
17 payable from sources other than the fund, and the authority may
18 covenant in any bond resolution or trust indenture to maintain
19 and replenish the reserve from money deposited in the fund
20 after issuance of bonds by the authority.

21 F. Money in the fund may be used to purchase bonds
22 issued by the authority pursuant to the Statewide Economic
23 Development Finance Act, which are payable from any designated
24 source of revenues or collateral. Purchasing and holding the
25 bonds shall not result in cancellation or merger of the bonds,

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1 notwithstanding the fact that the authority as the issuer of
2 the bonds is obligated to make the required debt service
3 payments and the fund held by the authority is entitled to
4 receive the required debt service payments.

5 Section 14. [NEW MATERIAL] TAX IMPACT FUND. --

6 A. The "tax impact fund" is created within the
7 state treasury. The fund shall consist of money appropriated
8 to the fund and money distributed to the fund by law. Money
9 remaining in the fund at the end of each fiscal year shall not
10 revert, but shall remain in the fund for the purposes set forth
11 in the Statewide Economic Development Finance Act. For the
12 purpose of mitigating the tax impact of a project, money in the
13 fund shall be distributed by the treasurer, upon vouchers
14 submitted by the department, to qualifying municipalities and
15 counties as payments in lieu of taxes in the same manner as
16 property taxes are distributed.

17 B. Payments in lieu of taxes from the tax impact
18 fund shall be made as a portion of the amount of the annual in-
19 lieu payment required to be made in connection with a project.
20 The amount of a payment in lieu of taxes to be made in
21 connection with a project shall be determined by the
22 department, in an amount not to exceed one-third of the amount
23 of the annual in-lieu payment required in an agreement among
24 the eligible entity, the local government and the local school
25 board.

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1 C. A local government within the jurisdictional
2 boundaries in which project property is located shall qualify
3 to receive payments in lieu of taxes in connection with project
4 property when the following conditions are satisfied:

5 (1) title to project property has been
6 transferred to the department in connection with financing
7 assistance provided pursuant to the Statewide Economic
8 Development Finance Act, resulting in an exemption from
9 property taxes that the local government would otherwise have
10 been entitled to receive;

11 (2) pursuant to an opt-in agreement, the local
12 government has certified to the department in advance that it
13 supports the project, subject to the project's compliance with
14 the planning, zoning, subdivision, building code and other
15 applicable laws and regulations governing land use of the local
16 government;

17 (3) the local government, local school board
18 and person proposing the project have agreed on the amount of
19 the annual in-lieu payment; and

20 (4) the department has determined that there
21 is sufficient money on deposit in the tax impact fund to make
22 distributions of payments in lieu of taxes for the project.

23 D. The department shall establish by rule
24 procedures for certification by local governments concerning
25 project support, notification of local school boards concerning

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1 financing and qualification for payments in lieu of taxes.

2 E. The amount of payments in lieu of taxes that a
3 qualifying municipality or county is entitled to receive shall
4 be determined by the department based upon:

5 (1) the annual reduction in property tax
6 revenue received by the qualifying municipality or county that
7 results from the transfer of title to project property to the
8 department;

9 (2) the increase in local revenues that the
10 qualifying municipality or county is anticipated to receive as
11 a result of the project;

12 (3) an allocation of the annual revenue
13 deposited to the tax impact fund among the qualifying
14 municipalities and counties that have qualified to receive
15 payments in lieu of taxes; and

16 (4) such adjustments as the department may
17 determine by rule are appropriate and necessary to carry out
18 the purposes of the Statewide Economic Development Finance Act,
19 including, without limitation, adjustments that are necessary
20 or desirable to:

21 (a) overcome particular barriers to
22 economic expansion in specific locales;

23 (b) mitigate the tax impact of a project
24 that will not be offset by increased local gross receipts
25 revenue production directly or indirectly resulting from the

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1 project; or

2 (c) encourage job growth in an area in
3 which unemployment is a particular problem.

4 Section 15. [NEW MATERIAL] CUMULATIVE AUTHORITY. -- The
5 Statewide Economic Development Finance Act shall be deemed to
6 provide an additional and alternative method for the
7 accomplishment of the things authorized by that act, shall be
8 interpreted as supplemental and additional to the powers
9 conferred by other laws and shall not be regarded as in
10 derogation of any powers now existing; provided that the
11 issuance of bonds pursuant to the provisions of the Statewide
12 Economic Development Finance Act need not comply with the
13 requirement of any other law applicable to the issuance of
14 bonds or notes.

15 Section 16. [NEW MATERIAL] LIBERAL INTERPRETATION. -- The
16 Statewide Economic Development Finance Act, being necessary for
17 the welfare of the state and its inhabitants, shall be
18 liberally construed to effect the purposes thereof.

19 Section 17. Section 5-10-4 NMSA 1978 (being Laws 1993,
20 Chapter 297, Section 4, as amended) is amended to read:

21 "5-10-4. ECONOMIC DEVELOPMENT PROJECTS-- RESTRICTIONS ON
22 PUBLIC EXPENDITURES OR PLEDGES OF CREDIT. --

23 A. No local or regional government shall provide
24 public support for economic development projects as permitted
25 pursuant to Article 9, Section 14 of the constitution of

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1 New Mexico except as provided in the Local Economic Development
2 Act or as otherwise permitted by law.

3 B. The total amount of public money expended and
4 the value of credit pledged in the fiscal year in which that
5 money is expended by a local government for economic
6 development projects pursuant to Article 9, Section 14 of the
7 constitution of New Mexico and the Local Economic Development
8 Act shall not exceed five percent of the annual general fund
9 expenditures of the local government in that fiscal year. The
10 limits of this subsection shall not apply to:

11 (1) the value of any land or building
12 contributed to any project pursuant to a project participation
13 agreement;

14 (2) revenue generated through the imposition
15 of the municipal infrastructure gross receipts tax pursuant to
16 the Municipal Local Option Gross Receipts Taxes Act for
17 furthering or implementing economic development plans and
18 projects as defined in the Local Economic Development Act or
19 projects as defined in the Statewide Economic Development
20 Finance Act; provided that no more than the greater of fifty
21 thousand dollars (\$50,000) or ten percent of the revenue
22 collected shall be used for promotion and administration of or
23 professional services contracts related to the implementation
24 of any such economic development plan adopted by the governing
25 body;

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1 (3) revenue generated through the imposition
2 of a county infrastructure gross receipts tax pursuant to the
3 County Local Option Gross Receipts Taxes Act for furthering or
4 implementing economic development plans and projects as defined
5 in the Local Economic Development Act or projects as defined in
6 the Statewide Economic Development Finance Act; provided that
7 no more than the greater of fifty thousand dollars (\$50,000) or
8 ten percent of the revenue collected shall be used for
9 promotion and administration of or professional services
10 contracts related to the implementation of any such economic
11 development plan adopted by the governing body;

12 (4) the proceeds of a revenue bond issue to
13 which municipal infrastructure gross receipts tax revenue is
14 pledged;

15 (5) the proceeds of a revenue bond issue to
16 which county infrastructure gross receipts tax revenue is
17 pledged; or

18 (6) funds donated by private entities to be
19 used for defraying the cost of a project.

20 C. A regional or local government that generates
21 revenue for economic development projects to which the limits
22 of Subsection B of this section do not apply shall create an
23 economic development fund into which such revenues shall be
24 deposited. The economic development fund and income from the
25 economic development fund shall be deposited as provided by

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1 law. Money in the economic development fund may be expended
2 only as provided in the Local Economic Development Act or the
3 Statewide Economic Development Finance Act. "

4 Section 18. Section 7-19D-11 NMSA 1978 (being Laws 1991,
5 Chapter 9, Section 3, as amended) is amended to read:

6 "7-19D-11. MUNICIPAL INFRASTRUCTURE GROSS RECEIPTS
7 TAX--AUTHORITY BY MUNICIPALITY TO IMPOSE--ORDINANCE
8 REQUIREMENTS--ELECTION.--

9 A. A majority of the members of the governing body
10 of a municipality may enact an ordinance imposing an excise tax
11 on any person engaging in business in the municipality for the
12 privilege of engaging in business. The rate of the tax shall
13 not exceed one-fourth of one percent of the gross receipts of
14 the person engaging in business and may be imposed in one-
15 sixteenth of one percent increments by separate ordinances.
16 Any ordinance enacting any increment of the first one-eighth of
17 one percent of the tax is not subject to a referendum of any
18 kind, notwithstanding any requirement of any charter
19 municipality, except that an increment that is imposed after
20 July 1, 1998 for economic development purposes set forth in
21 Paragraph (5) of Subsection C of this section shall be subject
22 to a referendum as provided in Subsection D of this section.

23 B. The tax imposed pursuant to Subsection A of this
24 section may be referred to as the "municipal infrastructure
25 gross receipts tax".

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1 C. The governing body of a municipality, at the
2 time of enacting any ordinance imposing the rate of the tax
3 authorized in Subsection A of this section, may dedicate the
4 revenue for:

5 (1) payment of special obligation bonds issued
6 pursuant to a revenue bond act;

7 (2) repair, replacement, construction or
8 acquisition of infrastructure improvements, including [~~but not~~
9 ~~limited to~~] sanitary sewer lines, storm sewers and other
10 drainage improvements, water, water rights, water lines and
11 utilities, streets, alleys, rights of way, easements,
12 international ports of entry and land within the municipality
13 or within the extraterritorial zone of the municipality;

14 (3) municipal general purposes;

15 (4) acquiring, constructing, extending,
16 bettering, repairing or otherwise improving or operating or
17 maintaining public transit systems or regional transit systems
18 or authorities; and

19 (5) furthering or implementing economic
20 development plans and projects as defined in the Local Economic
21 Development Act or projects as defined in the Statewide
22 Economic Development Finance Act, and use of not more than the
23 greater of fifty thousand dollars (\$50,000) or ten percent of
24 the revenue collected for promotion and administration of or
25 professional services contracts related to implementation of an

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1 economic development plan adopted by the governing body
2 pursuant to the Local Economic Development Act and in
3 accordance with law.

4 D. An ordinance imposing any increment of the
5 municipal infrastructure gross receipts tax in excess of the
6 first one-eighth of one percent or any increment imposed after
7 July 1, 1998 for economic development purposes set forth in
8 Paragraph (5) of Subsection C of this section shall not go into
9 effect until after an election is held and a majority of the
10 voters of the municipality voting in the election votes in
11 favor of imposing the tax. The governing body shall adopt a
12 resolution calling for an election within seventy-five days of
13 the date the ordinance is adopted on the question of imposing
14 the tax. The question shall be submitted to the voters of the
15 municipality as a separate question at a regular municipal
16 election or at a special election called for that purpose by
17 the governing body. A special municipal election shall be
18 called, conducted and canvassed as provided in the Municipal
19 Election Code. If a majority of the voters voting on the
20 question approves the ordinance imposing the municipal
21 infrastructure gross receipts tax, then the ordinance shall
22 become effective in accordance with the provisions of the
23 Municipal Local Option Gross Receipts Taxes Act. If the
24 question of imposing the municipal infrastructure gross
25 receipts tax fails, the governing body shall not again propose

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1 the imposition of any increment of the tax in excess of the
2 first one-eighth of one percent for a period of one year from
3 the date of the election. "

4 Section 19. Section 7-20E-19 NMSA 1978 (being Laws 1998,
5 Chapter 90, Section 7) is amended to read:

6 "7-20E-19. COUNTY INFRASTRUCTURE GROSS RECEIPTS TAX--
7 AUTHORITY TO IMPOSE RATE--USE OF FUNDS--ELECTION. --

8 A. The majority of the members of the governing
9 body of a county may enact an ordinance imposing an excise tax
10 at a rate not to exceed one-eighth of one percent of the gross
11 receipts of any person engaging in business in the county area
12 for the privilege of engaging in business. The tax may be
13 imposed in increments of one-sixteenth of one percent not to
14 exceed an aggregate rate of one-eighth of one percent.

15 B. The tax imposed pursuant to Subsection A of this
16 section may be referred to as the "county infrastructure gross
17 receipts tax".

18 C. The governing body, at the time of enacting an
19 ordinance imposing a rate of tax authorized in Subsection A of
20 this section, may dedicate the revenue for:

21 (1) county general purposes;

22 (2) payment of gross receipts tax revenue
23 bonds issued pursuant to Chapter 4, Article 62 NMSA 1978;

24 (3) repair, replacement, construction or
25 acquisition of any county infrastructure improvements;

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1 (4) acquisition, construction, operation or
2 maintenance of solid waste facilities, water facilities,
3 wastewater facilities, sewer systems and related facilities;

4 (5) acquiring, constructing, extending,
5 bettering, repairing or otherwise improving or operating or
6 maintaining public transit systems or regional transit systems
7 or authorities;

8 (6) planning, design, construction, equipping,
9 maintenance or operation of a county jail or juvenile detention
10 facility; planning, assessment, design or operation of a
11 regional system of juvenile services, including secure
12 detention and nonsecure alternatives, that serves multiple
13 contiguous counties; planning, design, construction,
14 maintenance or operation of multipurpose regional adult jails
15 or juvenile detention facilities; housing of county prisoners
16 or juvenile offenders in any county jail or detention facility;
17 or substance abuse, mental health or other programs for county
18 prisoners or other inmates in county jails or for juvenile
19 offenders in county or regional detention facilities; and

20 (7) furthering or implementing economic
21 development plans and projects as defined in the Local Economic
22 Development Act or projects as defined in the Statewide
23 Economic Development Finance Act, and use of not more than the
24 greater of fifty thousand dollars (\$50,000) or ten percent of
25 the revenue collected for promotion and administration of or

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1 professional services contracts related to implementation of an
2 economic development plan adopted by the governing body
3 pursuant to the Local Economic Development Act and in
4 accordance with law.

5 D. An ordinance imposing the county infrastructure
6 gross receipts tax shall not go into effect until after an
7 election is held and a majority of the voters in the county
8 area voting in the election votes in favor of imposing the tax.
9 The governing body shall adopt a resolution calling for an
10 election within seventy-five days of the date the ordinance is
11 adopted on the question of imposing the tax. The question
12 shall be submitted to the voters of the county area as a
13 separate question at a general election or at a special
14 election called for that purpose by the governing body. A
15 special election shall be called, conducted and canvassed in
16 substantially the same manner as provided by law for general
17 elections. If a majority of the voters voting on the question
18 approves the ordinance imposing the county infrastructure gross
19 receipts tax, then the ordinance shall become effective in
20 accordance with the provisions of the County Local Option Gross
21 Receipts Taxes Act. If the question of imposing the county
22 infrastructure gross receipts tax fails, the governing body
23 shall not again propose the imposition of the tax for a period
24 of one year from the date of the election."

25 Section 20. Section 7-36-3 NMSA 1978 (being Laws 1975,

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1 Chapter 218, Section 1, as amended) is amended to read:

2 "7-36-3. INDUSTRIAL REVENUE BOND, [~~AND~~] POLLUTION CONTROL
3 BOND AND ECONOMIC DEVELOPMENT BOND PROJECT PROPERTY--TAX
4 STATUS. --

5 A. Property interests of a lessee in project
6 property held under a lease from a county or a municipality
7 under authority of an industrial revenue bond or pollution
8 control revenue bond act or the Statewide Economic Development
9 Finance Act are exempt from property taxation for as long as
10 there is an outstanding bonded indebtedness under the terms of
11 the revenue bonds issued for the acquisition of the project
12 property, but in no event for a period of more than thirty
13 years from the date of execution of the first lease of the
14 project to the lessee by the county or municipality.

15 B. Property interests of a person, other than a
16 public utility, arising out of the purchase of a project
17 authorized by the Industrial Revenue Bond Act, the County
18 Industrial Revenue Bond Act, [~~or~~] the Pollution Control Revenue
19 Bond Act or the Statewide Economic Development Finance Act are
20 exempt from property taxation for as long as the project
21 purchaser remains liable to the project seller for any part of
22 the purchase price, but not to exceed thirty years from the
23 date of execution of the sale agreement.

24 C. The exemptions from property taxation under
25 Subsections A and B of this section are not cumulative."

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1 Section 21. Section 13-6-2 NMSA 1978 (being Laws 1979,
2 Chapter 195, Section 3, as amended by Laws 2001, Chapter 291,
3 Section 9 and also by Laws 2001, Chapter 317, Section 2) is
4 amended to read:

5 "13-6-2. SALE OF PROPERTY BY STATE AGENCIES OR LOCAL
6 PUBLIC BODIES--AUTHORITY TO SELL OR DISPOSE OF PROPERTY--
7 APPROVAL OF APPROPRIATE APPROVAL AUTHORITY.--

8 A. Providing a written determination has been made,
9 a state agency, local public body, school district or state
10 educational institution may sell or otherwise dispose of real
11 or tangible personal property belonging to the state agency,
12 local public body, school district or state educational
13 institution. Disposal of real or tangible personal property
14 under this section shall be by negotiated sale or donation to
15 an Indian nation, tribe or pueblo in New Mexico or by
16 negotiated sale or donation to other state agencies, local
17 public bodies, school districts or state educational
18 institutions or through the central purchasing office of the
19 governmental entity by means of competitive sealed bids or
20 public auction or, if a state agency, through the federal
21 property assistance bureau of the general services department.

22 B. A state agency shall give the federal property
23 assistance bureau of the general services department the right
24 of first refusal to dispose of tangible personal property of
25 the state agency. A school district may give the department

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1 the right of first refusal to dispose of tangible personal
2 property of the school district.

3 C. Except as provided in Section 13-6-2.1 NMSA 1978
4 requiring state board of finance approval for certain
5 transactions, sale or disposition of real or tangible personal
6 property having a current resale value of more than five
7 thousand dollars (\$5,000) may be made by a state agency, local
8 public body, school district or state educational institution
9 if the sale or disposition has been approved by the state
10 budget division of the department of finance and administration
11 for state agencies, the local government division of the
12 department of finance and administration for local public
13 bodies, the state department of public education for school
14 districts and the commission on higher education for state
15 educational institutions.

16 D. Prior approval of the appropriate approval
17 authority is not required if the property is to be used as a
18 trade-in or exchange pursuant to the provisions of the
19 Procurement Code.

20 E. The appropriate approval authority may condition
21 the approval of the sale or other disposition of real or
22 tangible personal property upon the property being offered for
23 sale or donation to a state agency, local public body, school
24 district or state educational institution.

25 F. The appropriate approval authority may credit a
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1 payment received from the sale of such real or tangible
2 personal property to the governmental body making the sale.
3 The state agency, local public body, school district or state
4 educational institution may convey all or any interest in the
5 real or tangible personal property without warranty.

6 G. This section shall not apply to:

- 7 (1) computer software of a state agency;
8 (2) those institutions specifically enumerated
9 in Article 12, Section 11 of the constitution of New Mexico;
10 (3) the New Mexico state police division of
11 the department of public safety;
12 (4) the state land office or the state highway
13 and transportation department; [~~and~~]
14 (5) property acquired by a museum through
15 abandonment procedures pursuant to the Abandoned Cultural
16 Properties Act;
17 (6) leases of county hospitals with any person
18 pursuant to the Hospital Funding Act; and
19 (7) property acquired by the economic
20 development department pursuant to the Statewide Economic
21 Development Finance Act. "

22 Section 22. Section 13-6-2.1 NMSA 1978 (being Laws 1989,
23 Chapter 380, Section 1, as amended) is amended to read:

24 "13-6-2.1. SALES, TRADES OR LEASES-- BOARD OF FINANCE
25 APPROVAL. --

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1 A. Except as provided in Section 13-6-3 NMSA 1978,
2 for state agencies, any sale, trade or lease for a period of
3 more than five years of real property belonging to a state
4 agency, local public body or school district or any sale, trade
5 or lease of such real property for a consideration of more than
6 twenty-five thousand dollars (\$25,000) shall not be valid
7 unless it is approved prior to its effective date by the state
8 board of finance.

9 B. The provisions of this section shall not be
10 applicable as to those institutions specifically enumerated in
11 Article 12, Section 11 of the constitution of New Mexico, the
12 state land office, ~~[or]~~ the state ~~[highway]~~ transportation
13 commission or the economic development department when
14 disposing of property acquired pursuant to the Statewide
15 Economic Development Finance Act. "

16 Section 23. Section 13-6-3 NMSA 1978 (being Laws 1961,
17 Chapter 41, Section 1, as amended) is amended to read:

18 "13-6-3. SALE, TRADE OR LEASE OF REAL PROPERTY BY STATE
19 AGENCIES-- APPROVAL OF LEGISLATURE-- EXCEPTIONS. --

20 A. Any sale, trade or lease for a period exceeding
21 twenty-five years in duration of real property belonging to any
22 state agency, which sale, trade or lease shall be for a
23 consideration of one hundred thousand dollars (\$100,000) or
24 more, shall be subject to the ratification and approval of the
25 state legislature prior to the sale, trade or lease becoming

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1 effective. The provision specified in Section 13-6-2 NMSA 1978
2 requiring approval of the state budget division of the
3 department of finance and administration as a prerequisite to
4 consummating such sales or dispositions of realty shall not be
5 applicable in instances wherein the consideration for the sale,
6 trade or lease shall be for a consideration of one hundred
7 thousand dollars (\$100,000) or more and wherein a state agency
8 not specifically excepted by Subsection B of this section is a
9 contracting party, and, in every such instance, the legislature
10 shall specify its approval prior to the sale, trade or lease
11 becoming effective.

12 B. The provisions of this section shall not be
13 applicable as to those institutions specifically enumerated in
14 Article 12, Section 11 of the constitution of New Mexico, the
15 state land office, ~~[or]~~ the state ~~[highway]~~ transportation
16 commission or the economic development department when
17 disposing of property acquired pursuant to the Statewide
18 Economic Development Finance Act. "

19 Section 24. Section 15-3B-2 NMSA 1978 (being Laws 1972,
20 Chapter 74, Section 2, as amended) is amended to read:

21 "15-3B-2. DEFINITIONS. -- As used in the Property Control
22 Act:

23 A. "capital outlay project" means the acquisition,
24 improvement, alteration or reconstruction of assets of a long-
25 term character that are intended to continue to be held or

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1 used, including land, buildings, machinery, furniture and
2 equipment. A "capital outlay project" includes all proposed
3 expenditures related to the entire undertaking;

4 B. "department" means the general services
5 department;

6 C. "director" means the director of the division;

7 D. "division" means the property control division
8 of the department;

9 E. "jurisdiction" means all state buildings and
10 land except those under the control and management of the state
11 armory board, the office of cultural affairs, the state fair
12 commission, the department of game and fish, the state highway
13 and transportation department, the commissioner of public
14 lands, the state parks division of the energy, minerals and
15 natural resources department, the state institutions of higher
16 learning, the New Mexico school for the deaf, the New Mexico
17 school for the visually handicapped, the judicial branch, [and]
18 the legislative branch and property acquired by the economic
19 development department pursuant to the Statewide Economic
20 Development Finance Act; and

21 F. "secretary" means the secretary of general
22 services. "

23 Section 25. TEMPORARY PROVISION--TRANSFER. --After all
24 payments of the principal of, interest on and all other charges
25 relating to bonds issued by the New Mexico finance authority

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1 and payable from the public project revolving fund have been
2 paid for that fiscal year, within fifteen days after the end of
3 fiscal year 2003, the authority shall transfer the lesser of
4 two million dollars (\$2,000,000) or the amount available in the
5 public project revolving fund after all debt service payments
6 described in this section have been paid, to the statewide loan
7 participation fund.

8 Section 26. APPROPRIATION. --Two million dollars
9 (\$2,000,000) is appropriated from the general fund to the tax
10 impact fund for expenditure in fiscal year 2004 and subsequent
11 fiscal years pursuant to the Statewide Economic Development
12 Finance Act. Any unexpended or unencumbered balance remaining
13 at the end of a fiscal year shall not revert to the general
14 fund.

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